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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

MALIBU MEDIA, LLC,	**MEMORANDUM IN SUPPORT OF**
	MOTION FOR SUMMARY JUDGMENT
Plaintiff,	Civil No.: 2:15-cv-06722-SDW-SCM
v.	
TOM CLANCY	
Defendant	

Now into court, Defendant, Tom Clancy, Pro Se, hereby files this Memorandum in support of Motion for Summary Judgment under Rule 56.

MAY IT PLEASE THE COURT:

Defendant, Tom Clancy, files the following Memorandum in Support of its Motion for Summary Judgment. Based on the points to be raised within this memorandum, the Plaintiff's claims against Tom Clancy fail, as there is no genuine issue of material fact; and, thus, summary judgment is proper as a matter of law.

To establish infringement, the plaintiff must prove: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).

While not conceding element one, it is with the second element that Defendant takes particular issue. This second element requires proof: (1) Of actual copying of the plaintiff's work by the defendant and (2) that such copying constitutes an improper appropriation of the plaintiff's work.

To establish the second element of a copyright infringement claim, "the copyright owner must demonstrate that (1) the defendant has actually copied the plaintiff's work; *and* (2) the copying is illegal because a substantial similarity exists between the defendant's work and the protectable elements of plaintiff's." Yurman Design, Inc., 262 F.3d 101at 110

(2nd Cir., 2001). "The word 'copying' is shorthand for the infringing of any of the copyright owner's five exclusive rights described in § 106." Arista Records, 604 F.3d 110, at 117 (2nd Cir., 2010).

Defendant states that he has not copied, in any fashion, plaintiff's 13 videos. As defendant Tom Clancy does not reside at the infringing location and has never had any possession of these works, he did not and could not have copied these works, in whole or in part.

Plaintiff claims "13 Statutory Claims" in Exhibit A of the Complaint where there are listed 13 dates and times described as "Hit Date UTC." These are 13 separate events in which Plaintiff claims that the Defendant downloaded (copied) plaintiff's works. Plaintiff, who offers this court considerable praise for geolocation technology (See Complaint. Par. 6) (GPS technology), alleges that these infringements all occurred at 7 Locklin Court In Par. 9 of the Complaint Plaintiff Falsely alleges that Tom Clancy resides at 7 Locklin Court and later in Par. 16 utilizing a conclusory allegation (without presenting even one fact) falsely alleges that "Plaintiff's investigator, IPP International UG established a direct TCP/IP connection with the Defendant's IP address" as set forth on Complaint Exhibit A.

The site of claimed infringement is not defendant's address and the defendant does not have any internet service at that address by any provider. Defendant can conclusively show that for each and every alleged infringing download of a video, Defendant was not present at the site of the alleged infringement. Defendant largely leverages location technology, highly praised by Plaintiff, to show that Defendant was not at the infringing location at the times claimed in the Complaint but instead at other various locations – sometimes out of state and sometimes out of the country.

See Declaration of Tom Clancy revealing that defendant did not reside at the infringing location as claimed by Plaintiff, did not have an IP address or any internet service provider at the infringement location and furthermore, was not at 7 Locklin Ct. as geolocation technology and other evidence shows Defendant's presence at other locations other than the infringing location (7 Locklin Ct.) when the alleged infringements are said to have occurred by Plaintiff.

The court should note that nowhere in the Complaint does the Plaintiff claim that Defendant's name appears on the internet service contract or that Defendant was a client of the ISP, Optimum Online, at the site of the alleged infringing location (7 Locklin Ct.) during the alleged timespan of the complaint. Why? Because Defendant does not reside there and has not resided there during any of 2013, 2014, 2015 or 2016. See Declarations of Tom Clancy.

Plaintiff alleges that Defendant (Tom Clancy) downloaded Copyright protected videos at the same infringing site 7 Locklin Court on 13 separate occasions. Proof of Defendant's location at a location other than the infringing location for each date and time of alleged infringement is detailed in the attached Exhibit D Personal location data of Tom Clancy the defendant [forty-nine pages]. These alleged times of infringement are detailed in Plaintiff's Complaint Exhibit A of the Complaint as "Hit Date UTC" and are addressed separately in chronological order in the attached Exhibit D.

Respectfully submitted,

Thomas J Clancy, Pro Se